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UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises and of the Special Rapporteur on the rights of indigenous peoples.

REFERENCE: OL Business enterprises (2011) Indigenous (2001-8)
OTH 8/2013

11 November 2013

Dear Mr. Letwin,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises and Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolutions 17/4 and 24/9.

As indicated in the joint allegation letter OTH 4/2013 dated 4 April 2013 addressed to IAMGOLD Corporation, the Working Group is authorized by the Human Rights Council to “seek and receive information from all relevant sources, including Governments, transnational corporations and other business enterprises” in order to, inter alia, promote the effective and comprehensive implementation of the United Nations Guiding Principles on Business and Human Rights¹. The Special Rapporteur for his part is authorized to “gather, request, receive and exchange information and communications from all relevant sources” on alleged human rights violations of indigenous peoples.²

The Working Group and the Special Rapporteur wish to express their thanks for your response dated 5 June 2013, responding to our joint allegation letter, and your willingness to engage with the Working Group and the Special Rapporteur on this issue.

The Working Group and Special Rapporteur take this opportunity to provide you with further information on the communications procedure of special procedures of the Human Rights Council. When a special procedure mandate holder receives information on alleged human rights violations, s/he can send a communication, usually taking the form of a letter, transmitted through the Office of the High Commissioner for Human Rights, to the Government concerned requesting information and comments on the allegation and that preventive or investigatory action be taken. Occasionally,

¹ A/HRC/RES/17/4, para. 6

² See A/HRC/RES/15/14, para. 1(b) extended by A/HRC/RES/24/9.

communications are also sent to intergovernmental organisations or Non-State actors, such as business enterprises, where relevant. Communications may deal with individual cases, cases of groups or communities, general trends and patterns of human rights violations occurring in a particular country, or the content of draft or existing legislation considered to be a matter of concern. The special procedure mandate holder asks the Government concerned to take all appropriate action to investigate and address the alleged events as appropriate and to communicate the results of its investigation and actions. Depending on the response received, the special procedure mandate holder may decide to inquire further or make recommendations.

Communications do not imply any kind of value judgment on the part of the Special Procedure concerned and are thus not per se accusatory. They are not intended as a substitute for judicial or other proceedings at the national level.

It is within this procedure and context that the Working Group and the Special Rapporteur sent the allegation letter together with the Special rapporteur on the rights of indigenous peoples to IAMGOLD Corporation and the Government of Suriname in April 2013. While the Working Group and Special Rapporteur note your strong objections to the allegations made in the letter, inter alia, as to the facts as reported and the interpretation of the Inter-American Court of Human Rights' judgment in *Saramaka People v. Suriname*³, the main purpose of the communications procedure is to obtain clarification in response to allegations of violations with a view to trying to ensure, along with the Government and other stakeholders concerned, the protection of human rights.

In this regard, the Working Group welcomes your response with regard to whether the facts summarized in the letter are accurate, and the various commitments which you refer to in your letter. In particular, the Working Group notes the information on IAMGOLD's human rights policy and the various initiatives you have undertaken with regard to community engagement programmes. Further, the Working Group notes that your letter indicates that in the context of current and future exploration activity within the joint venture area, IAMGOLD's subsidiary will, on behalf of the joint venture, engage with potentially impacted communities to ensure any potential impacts are understood, mitigated and/or eliminated, as appropriate; and that any future planned developments will be evaluated with due attention for consultation and engagement with potentially impacted communities. The Working Group also notes your statement that all your actions relating to the Rosebel operations have been conducted in full compliance with all legal obligations.

For his part, the Special Rapporteur on the rights of indigenous peoples would like to refer to the comments he made on his last annual report to the Human Rights Council regarding communications sent, replies received and observations (A/HRC/24/41/Add.4) which includes the communications sent and received related to

³ *Saramaka People v. Suriname*, Judgment of 28 November 2007, Inter-Am Ct. H.R., (Ser. C) No. 172 (2007)

this case. In his report, the Special Rapporteur thanked IAMGOLD corporation for its response of 5 June 2013 and took note of the company's stated commitment to international human rights standards and to engage with local communities to address and resolve any potential problems deriving from its operations. He nonetheless noted the significant differences between the company's assessment of the facts and the allegations received with respect to: the extent of current and planned mining activities, the extent of the potential impact of current and planned mining activities on the lands and resources of the Saramaka people, including the potential need for relocation of Saramaka communities; and the adequacy of consultation processes undertaken.

In light of the above, the Special Rapporteur expressed his intention to further examine the factual issues raised in the allegations and IAMGOLD's response with a view to providing future observations and recommendations (A/HRC/24/41/Add.4, paras. 150-1).

In accordance with our respective mandates from the Human Rights Council, we would welcome more detailed information on the human rights due diligence that has been undertaken with respect to the concession and how IAMGOLD has sought to address any adverse human rights impacts; and how and to what extent IAMGOLD has exercised its influence to address potential adverse human rights impacts caused by other parties connected to its operations.

As mentioned in our original letter, the Working Group and the Special Rapporteur undertake to ensure that your response will be taken into account in developing any recommendations that we may make to IAMGOLD and the Government of Suriname for consideration pursuant to the terms of our mandates.

The Working Group further undertakes to ensure that your response be accurately reflected in the reports that we submit to the Human Rights Council, and invite you to review the recent communications report of special procedures (A/HRC/24/21) which attaches our original allegation letter and your response thereto as well as the comments by the Special Rapporteur on the rights of indigenous peoples in his report on communications sent, replies received and observations (A/HRC/24/41/Add.4).

Please accept, Mr. Letwin, the assurances of our highest consideration.



Pavel Sulyandziga
Working Group on the issue of human rights and transnational
corporations and other business enterprises

James Anaya
Special Rapporteur on the rights of indigenous peoples

